

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

JENNIFER M. OSTERMILLER,

Plaintiff,

vs.

C/O STEVEN GEARTNER, CORY
KIRKPATRICK, OFFICER IHDE, and
RICH ST. JOHN,

Defendants.

CV 19-09-BLG-BMM-JTJ

**ORDER ADOPTING MAGISTRATE
JUDGE’S FINDINGS AND
RECOMMENDATIONS**

Plaintiff Jennifer Ostermiller (“Ostermiller”) filed a *pro se* Complaint on January 28, 2019. (Doc. 1.) United States Magistrate Judge John Johnston issued a Scheduling Order on September 13, 2019, requiring the parties to file initial disclosure statements and to exchange certain documents within sixty days. (Doc. 32 at 1-3.) Ostermiller failed to file a timely disclosure statement.

Judge Johnston entered an Order on December 13, 2019, directing Ostermiller to file her statement on or before January 10, 2020. (Doc. 40.) Judge Johnston advised Ostermiller that he would recommend that the Court dismiss the case if Ostermiller failed to comply. (Doc. 40.) Judge Johnston reminded Ostermiller that she needed to file her disclosure statement on or before January

20, 2020, in an Order dated December 30, 2019. (Doc. 42.) Ostermiller has not filed her disclosure statement.

Judge Johnston issued Findings and Recommendations on February 5, 2020. (Doc. 45.) Judge Johnston noted his concern with Ostermiller's failure to comply with his Orders dated September 13, 2019 (Doc. 32), December 13, 2019 (Doc. 40), and December 30, 2019 (Doc. 42.). (Doc. 45 at 3.) Judge Johnston determined that he would not tolerate Ostermiller's failure to comply with his Orders. Judge Johnston recommends that the Court dismiss this case without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. (Doc. 45 at 3.) Judge Johnston notified both parties that they had fourteen days to file objections to his Findings and Recommendations. (*Id.* at 6.)

Neither party filed objections to Judge Johnston's Findings and Recommendations. The parties have waived the right to de novo review thereof. 28 U.S.C. § 636(b)(1)(C). Absent objection, this Court reviews findings and recommendations for clear error. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000)

(citations omitted). Reviewing for clear error and finding none, **IT IS ORDERED** that:

1. Judge Johnston's Findings and Recommendations (Doc. 45) are **ADOPTED IN FULL**.

2. This matter is **DISMISSED WITHOUT PREJUDICE** pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.

3. The Clerk of Court shall close this matter and enter judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.

4. The Clerk of Court shall have the docket reflect that the Court certifies pursuant to Rule 24(a)(3)(A) of the Federal Rules of Appellate Procedure that any appeal of this decision would not be taken in good faith.

DATED this 24th day of February, 2020.



Brian Morris
United States District Court Judge